



**MEMORANDUM OF UNDERSTANDING BETWEEN THE  
COMPETITION COMMISSION OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION  
OF THE PEOPLE’S REPUBLIC OF CHINA  
AND THE COMMISSIONER OF COMPETITION, COMPETITION BUREAU  
OF THE GOVERNMENT OF CANADA  
REGARDING THE APPLICATION OF COMPETITION LAWS  
AND THE SHARING OF INFORMATION**

**THE COMPETITION COMMISSION OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE’S REPUBLIC OF CHINA (THE “COMPETITION COMMISSION”), AND THE COMMISSIONER OF COMPETITION, COMPETITION BUREAU OF THE GOVERNMENT OF CANADA, (THE “COMMISSIONER OF COMPETITION”) referred to as the “Participants”;**

**RECOGNIZING** that cooperation and coordination of their activities may result in more effective resolution of the issues arising from the application of the competition laws of their respective territories than would be attained through independent action;

**ACKNOWLEDGING** that similarities in the legal regimes and relevant aspects of the competition laws of their respective territories can be expected to facilitate effective cooperation, in particular in the area of technical cooperation;

**ACKNOWLEDGING** that it is in their common interest to cooperate and share information, where appropriate and practicable;

**ACKNOWLEDGING** that it is in their common interest to work together on technical cooperation, including policy activities, related to the application of competition laws;

**ACKNOWLEDGING** that it is in their common interest to minimize any potentially adverse effect of one Participant’s activities on the other Participant’s interests in the application of competition laws;

**HAVE COME** to the following understanding:

**PURPOSE**

1. The purpose of this Memorandum of Understanding (“MOU”) is to promote cooperation, coordination, and information sharing between the Participants.

## DEFINITIONS

2. For the purpose of this MOU:

“activity” means any activity of a Participant in relation to the competition laws it administers or enforces including any investigation, proceeding or process conducted by a Participant under those laws, any market study, advocacy initiative, staff training initiative or other activity;

“competition laws” means:

- (i) for the Commissioner of Competition: the *Competition Act*, R.S.C., 1985, c. C-34 except for sections 52 through 60, Part VII.1, sections 91 through 103 and Part IX,
- (ii) for the Competition Commission: the *Competition Ordinance* (Cap. 619), except for Division 4 of Part 6, Schedule 4, and Schedule 7,

as well as any amendments and other laws or regulations the Participants jointly decide in writing to be competition laws for the purposes of this MOU;

“information” means any information in the possession or control of a Participant; and

“territory” means the territory in which a Participant has jurisdiction.

3. Each Participant will notify the other as soon as practicable of any substantive amendments to the competition laws of its territory.

## COOPERATION AND COORDINATION

4. When the Participants are pursuing activities with regard to the same or related matters, they will endeavour to cooperate and coordinate their activities and share information, where appropriate and practicable, to the extent permitted by the laws applicable in each Participant’s territory.
5. The Participants understand that, subject to their respective available resources, technical cooperation related to the application of competition laws may include forms of cooperation that the Participants mutually decide are appropriate, including the sharing of competition law enforcement experience, the sharing of significant developments regarding the competition laws of their respective territories, training courses, seminars or workshops, staff exchanges, and other similar cooperation on a bilateral basis, or in collaboration with other competition authorities and international organizations.

6. When a Participant communicates that a specific activity of the other Participant may affect the informing Participant's interests in the application of the competition laws of its territory, the other Participant will, to the extent compatible with its interests in the application of the competition laws of its territory and insofar as permitted by the laws of its territory, endeavour to provide the informing Participant with timely notice of significant developments relating to those interests of the informing Participant and an opportunity to provide input regarding any proposed resolution, decision, determination, penalty or other remedy to be made, pursued or sought in respect of the matter.

#### **WORK PLAN**

7. The Participants will develop a work plan of cooperative initiatives related to the application of the competition laws, which may be revised by mutual written consent. The Participants will review the need for a work plan at regular intervals.

#### **COMMUNICATIONS**

8. The Participants will notify each other in writing of a designated contact point to facilitate communications under this MOU.
9. The Participants may communicate by any technological means available.

#### **NOTIFICATION**

10. Each Participant will notify the other with respect to its activities that may affect the other Participant's interests in the application of the competition laws of its territory, including those that:
  - (i) may be relevant to the activities of the other Participant;
  - (ii) involve any conduct carried out in whole or in part in the other Participant's territory that may be subject to penalties or other remedies under the competition laws applied by the other Participant, except where such conduct is insubstantial;
  - (iii) involve penalties or other remedies that expressly require or prohibit conduct in the other Participant's territory or are otherwise directed at conduct in that territory; and
  - (iv) involve seeking information located in the other Participant's territory, except with respect to contact by any technological means with a person in the other Participant's territory when that person is not the subject of an investigation and the contact seeks only an oral response on a voluntary basis. The Participants will notify each other in advance of proposed in-person visits to the territory of a Participant by officials of the other Participant with respect to investigations. The Participants understand that such visits remain subject to the relevant entry requirements for the Hong Kong Special Administrative Region of the People's Republic of China or Canada.

11. Once it becomes evident that notifiable circumstances are present, a Participant will endeavour to give notification to the other Participant as soon as practicable.
12. The Participants will ensure that notifications include a description of the nature of the activities and identify the provisions of the competition laws concerned. The Participants will also endeavour to ensure that notifications are sufficiently detailed to enable the notified Participant to make an initial evaluation of the effect of the activities on its interests in the application of the competition laws of its territory.

#### **REQUESTS FOR INFORMATION**

13. A Participant may make a formal request for information, in which case the request will be accompanied by a statement:
  - (i) confirming that the requesting Participant considers that the provision of the information will assist, or will be likely to assist, the requesting Participant in performing functions or exercising powers in relation to the application of the competition laws of its territory;
  - (ii) explaining why the requesting Participant considers that the information may not be more conveniently obtained from another source;
  - (iii) confirming that the use of any information received by a requesting Participant will be restricted to the requesting Participant and to purposes relevant to the application of the competition laws of the territory of that Participant, unless consent is obtained from the other Participant, or unless otherwise permitted by the competition laws of the territory of the requesting Participant;
  - (iv) confirming that the information received by the requesting Participant will be treated in a confidential manner and, except for the purposes relevant to the application of the competition laws of its territory, will not be further disclosed without the other Participant's express consent, or unless otherwise permitted by the competition laws of the territory of the requesting Participant;
  - (v) confirming that the requesting Participant will oppose, to the fullest extent consistent with the laws of its territory, any request by a third party for disclosure of the requested information, subject to consultation between the Participants; and
  - (vi) confirming that the requesting Participant will share with the other Participant the outcome of the activities for which the information was requested.

#### **PROVISION OF INFORMATION**

14. The Commissioner of Competition will provide information (whether or not in response to a request under paragraph 13) in accordance with section 29 of the *Competition Act*, or any other relevant information sharing powers related to the administration or enforcement of Canadian competition laws, and in accordance with any policies, guidelines, or practices of the Commissioner in relation to the provision of information.

15. The Competition Commission will provide information (whether or not in response to a request under paragraph 13) in accordance with Part 8 of the *Competition Ordinance*, if applicable, or any other relevant information sharing powers related to the administration or enforcement of Hong Kong competition laws, and in accordance with any other policies, guidelines, or practices of the Competition Commission in relation to the provision of information.
16. The Participant providing information may attach conditions (including privacy protections) to the provision of the information, including as to:
  - (i) the confidentiality of information;
  - (ii) the storage, use of, or access to any information provided;
  - (iii) the copying, returning, or disposal of copies of any information provided; and
  - (iv) the payment of costs reasonably incurred by the Participant providing the information.
17. A Participant will not communicate information to the other Participant if such communication is prohibited by the laws of the territory of the Participant possessing the information, or if such communication of information is incompatible with the interests of that Participant in the application of the competition laws of its territory.
18. The Participants will not communicate information obtained under an application for immunity or leniency, unless the immunity or leniency applicant expressly consents.

#### **PROTECTION AND USE OF INFORMATION**

19. With respect to any information provided under this MOU, the receiving Participant will:
  - (i) use the information only in accordance with any conditions attached under paragraph 16, except as permitted by the competition laws of the territory of the receiving Participant;
  - (ii) keep the information secure in accordance with the Participants' standard evidence handling procedures, and in accordance with any conditions imposed under paragraph 16;
  - (iii) without prejudice to the application of Part 8 of the *Competition Ordinance* when the receiving Participant is the Competition Commission, or to the application of section 29 of the *Competition Act* when the receiving Participant is the Commissioner of Competition, protect to the fullest extent possible confidential information (including personal information about an identifiable individual), including in response to requests made by third parties, unless the Participant providing the confidential information consents in writing to its communication; and
  - (iv) inform the other Participant if it discloses the information to any third party (including when the disclosure is inadvertent).

- 20.** The Participants understand that any information they receive under this MOU will be subject to the laws of their respective territories (including privacy and access to information laws).

#### **MEETINGS**

- 21.** The Participants will meet periodically, as necessary, to:
- (i) exchange information on their activities and priorities in relation to the competition laws of their respective territories;
  - (ii) exchange information on economic sectors of common interest;
  - (iii) discuss competition law changes that have been implemented or may be under consideration;
  - (iv) discuss competition advocacy initiatives;
  - (v) discuss the content of, and arrangements for, the cooperative initiatives that they establish in relation to the application of competition laws; and
  - (vi) discuss other matters of mutual interest relating to the application of the competition laws of their respective territories or the operation of this MOU.
- 22.** The Participants may meet in person or by any technological means available.

#### **INTERPRETATION AND APPLICATION**

- 23.** The Participants will discuss any questions arising out of this MOU, including questions on its interpretation or application, and will address them in as timely and practicable a manner as circumstances permit.

#### **LAWS AND LEGAL EFFECT**

- 24.** Nothing in this MOU will require a Participant to act, or to refrain from acting, in a manner inconsistent with the laws of its territory, or will require any change to those laws.
- 25.** This MOU is not legally binding.

#### **FINAL PROVISIONS**

- 26.** This MOU will come into effect on the date of final signature.
- 27.** The Participants may amend this MOU upon their mutual written consent.

28. A Participant may terminate this MOU by giving a 60-day written notice to the other Participant.
29. Unless otherwise terminated, this MOU will apply to any successor of either Participant.

SIGNED in duplicate at Paris on this 2<sup>nd</sup> day of December 2016, in the English and French languages, each version being equally valid.

*[Signed]*

*[Signed]*

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**FOR THE COMPETITION COMMISSION  
OF THE HONG KONG SPECIAL  
ADMINISTRATIVE REGION OF THE  
PEOPLE'S REPUBLIC OF CHINA**

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**FOR THE COMMISSIONER OF  
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